

170621manningOA

Argument

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 LESLIEANN MANNING,

4 Plaintiff,

5 v.

15 Cr. 00003 (KMK)

6 PATRICK GRIFFIN, et al.,

7 Defendants.

8 -----x

White Plains Courthouse
White Plains, N.Y.
June 21, 2017
11:45 a.m.

9
10 Before:

11 THE HONORABLE KENNETH M. KARAS,

12 District Judge

13 APPEARANCES

14 CARDOZO CIVIL RIGHTS CLINIC

15 Attorneys for Plaintiff LeslieAnn Manning

16 SUSAN HAZELDEAN

BETSY GINSBERG

17 NEW YORK STATE ATTORNEY GENERAL'S OFFICE

18 Attorney for Defendants Patrick Griffin, et al.

MARIA HARTOFILIS

170621manningOA

Argument

1 (In open court)

2 THE LAW CLERK: LeslieAnn Manning v. Griffin, et al.

3 Counsel, state your appearances for the record.

4 MS. HAZELDEAN: Good morning, your Honor. My name is
5 Susan Hazeldean here on behalf of plaintiff LeslieAnn Manning.

6 THE COURT: Good morning.

7 MS. GINSBERG: Betsy Ginsberg here on behalf of
8 LeslieAnn Manning. Good morning, your Honor.

9 MS. HARTOFILIS: Good morning, your Honor. Assistant
10 Attorney General Maria Hartofilis for the defendants.

11 THE COURT: Good morning. Please be seated.

12 They say the sequel is never as good. I beg to
13 differ. All right.

14 So, we're here for argument on the motion. I've read
15 the papers. It's the defendants' motion. The floor is yours.

16 MS. HARTOFILIS: Defendants' motion, your Honor.
17 Thank you.

18 The defendants move to dismiss the second amended
19 complaint, your Honor, because it's our position that the
20 plaintiff did not cure the pleading deficiencies the Court
21 enumerated in its decision. They did not allege the requisite
22 facts that are required to establish the subjective prong of
23 deliberate indifference. The new allegations that they raise
24 about a sexual activity in sublevel E and some sexual assaults
25 without alleging when they occurred, the nature of the

170621manningOA

Argument

1 assaults, whether the defendants were even working at the
2 facility, whether they were aware, most significantly, whether
3 they involve transgender inmates, which is the issue in this
4 case, there are no such allegations. So, we feel that they did
5 not cure the pleading deficiencies alleged in the claim and the
6 personal involvement of the named defendants.

7 THE COURT: So, one would imagine, never having run a
8 prison myself, but one would imagine that prison officials are
9 constantly monitoring where the weak spots might be in terms of
10 security and monitoring; the same way, you know, like a police
11 precinct commander will note certain streets within the
12 precinct where there might be an uptick in criminal activity.
13 So then you would figure out, okay, what can we do to address
14 that.

15 As you know, it may be that there's no precise number
16 or precise dates that are given of the sexual assaults that
17 take place in subblock E or even the other, sort of, sexual
18 activity, but I'm not sure why it matters that there's no
19 transgender attacks that are identified, because why wouldn't
20 it tell the prison officials that subblock E is a dangerous
21 area, and combined with the, sort of, extra danger that is
22 presented when there are transgender inmates in an all-male
23 facility as plaintiff is alleging here, wouldn't that put them
24 on notice that they need to change whatever procedures they
25 have in place, whether it's cameras, whether it's increased

170621manningOA

Argument

1 security guard monitoring, whether it's making people sign in
2 before they go, whatever it is, I wouldn't pretend to know
3 the answers, but why wouldn't that at least call out for
4 something along those lines?

5 MS. HARTOFILIS: Of course, your Honor. Of course
6 they have to stay abreast of any issues in the prison, but it's
7 our position, that not only do they not allege with specificity
8 in the nonconclusory or nonvague allegations that there were
9 assaults of transgenders, but they don't allege that there
10 were, sufficiently, assaults of any inmates.

11 The allegations of sexual activity -- sexual activity,
12 I mean, we all know that there is sexual activity in prison,
13 consensual sexual activity between inmates. That wouldn't put
14 them on notice that Ms. Manning was at risk of being raped, but
15 they do have to say a little bit more than there was sexual
16 activity and sexual assaults in the past. When? And they also
17 don't allege that they knew about it. They have to know about
18 them.

19 Like your Honor just stated, if they're aware, then
20 they would have to take the measures, but if they're not aware,
21 how can they take the measures specifically for that area,
22 because that was the deficiency that the Court found, limited
23 to that area, but even taking the prison as a whole.

24 THE COURT: I mean, it's not a 90-plea center. They
25 don't have to identify all that much in terms of specifics for

170621manningOA

Argument

1 the history of the inappropriate behavior or even violent
2 behavior. And there certainly is enough for them to say that,
3 for example, Cohen is told by plaintiff, look, there's people
4 coming and going, really, it's not a secure environment, and
5 Cohen basically says, What do you want me to do about it?
6 That's specific notice of an unmonitored, sort of, unsecured
7 area; the notion that there are sexual assaults and prison
8 officials wouldn't know about that is I think a little
9 difficult to accept. Or, put another way, it's not even
10 plausible that they would know because that's all we're testing
11 here, is plausibility. And you know, the dates of the
12 particular attacks, I'm not sure why that matters. To the
13 extent that they happened, and they happened in subblock E,
14 and, as I said, plaintiff says to Cohen it's kind of a
15 free-for-all in subblock E, and Cohen, sort of, throws up his
16 hand and says, Well, what do you want me to do about it?

17 MS. HARTOFILIS: The allegations originally were that
18 the area was noisy and the doors -- inmates would come and go;
19 it was a hangout area. And another was that she complained to
20 Cohen that the area was dangerous. What do you mean by
21 dangerous? Is it an inmate could get attacked?

22 Rape is a serious risk. She's been in the prison for
23 a very long time. She could have filed a complaint, filed a
24 grievance. He is a teacher for the sensorially disabled
25 inmates. He's a civilian. And to assume that he would have

170621manningOA

Argument

1 the authority to issue disciplinary violations, you know, is a
2 real leap.

3 THE COURT: Why couldn't Cohen then go to a sergeant,
4 to a captain, to the warden and say this is what the inmates
5 are telling me. You're right. Cohen can't be the person who
6 adopts or mandates a difference in the security protocols, but
7 Cohen can at least be a conduit in information.

8 MS. HARTOFILIS: He could have. Maybe he didn't. We
9 don't know. Maybe he did do that. But you can't have a
10 civilian -- she did have recourses. If she was concerned, she
11 could have a complaint to people who could have done something
12 about it, and she didn't do it. She's alleging that the
13 alleged attacker had exposed himself to her previously. She
14 could have reported that and she didn't. She had reported to
15 her attorneys about the sexual pat frisks and her attorneys
16 contacted the prison. She could have done the same thing. If
17 she didn't want to do it through the facility, she could have
18 contacted attorneys like she has been doing, and they would
19 have immediately reached out to the facility, but none of that
20 was done here, your Honor.

21 THE COURT: I think the reason she doesn't go to the
22 prison officials after Williams exposed himself is because
23 she's worried about reprisal from doing that, especially in an
24 environment where she also alleges that she was dealing with
25 harassment from the guards themselves. Even from her

170621manningOA

Argument

1 perspective, it's not as if there's a friend who can be trusted
2 to deal with this.

3 And before I forget, my recollection is that the other
4 thing that plaintiff alleges with regard to -- so she alleges
5 that there were sexual assaults, plural. And then in response
6 to some of these attacks, that there were changes in the, sort
7 of, security pattern, like, they were temporary. They would
8 maybe change how it was that they would try to monitor the
9 area, but they never really adopted any, sort of, permanent
10 change. That evidence is knowledge on their part that there
11 has been a problem and there's a need to address it, except
12 that they didn't stick with it.

13 MS. HARTOFILIS: Your Honor, which defendants? Would
14 Peter Cohen be personally liable for something like that or the
15 officer, the sergeant who was just named in the caption, no
16 allegations? What could the sergeant have done?

17 And again, when were those sexual assaults? It is
18 important when they occurred. Was it a few months ago? Was it
19 five years ago? Ten years ago? That is very, very relevant in
20 this case because for them to make changes, they had to have
21 had the knowledge about that specific area, and they don't
22 allege that they did.

23 THE COURT: Okay. Other points you want to address?

24 MS. HARTOFILIS: The personal involvement, your Honor,
25 which I just touched on very briefly, that they do not allege

170621manningOA

Argument

1 each individual's personal involvement in this case, from the
2 superintendent down to Peter Cohen.

3 And the last thing that I'd like to add is that
4 they've had three opportunities now. There was a complaint, an
5 amended complaint, and a second amended complaint. The federal
6 rules don't provide for a third amended. The Court, it's our
7 position, should deny them the opportunity to amend it again,
8 because if they had these allegations, they would have been in
9 the second amended complaint because the Court's order was very
10 explicit as to what the pleading deficiencies were.

11 THE COURT: Enough is enough from your perspective, to
12 put it bluntly.

13 MS. HARTOFILIS: To put it bluntly, to put it bluntly.
14 Thank you.

15 THE COURT: All right. Thank you.

16 MS. HAZELDEAN: Good morning, your Honor.

17 THE COURT: Good morning.

18 MS. HAZELDEAN: Your Honor, both sides in this case
19 acknowledge that in this Court's prior order on March 31st of
20 2016 dismissing the plaintiff's amended complaint, this Court
21 ruled that there were sufficient facts in the complaint to find
22 that all defendants knew that LeslieAnn Manning was at risk
23 of sexual assault because she was a transgender woman in a
24 man's prison.

25 As you know, your Honor, there are two elements of

170621manningOA

Argument

1 deliberate indifference. The first is knowledge of the risk,
2 and the second is whether, knowing that Ms. Manning was at risk
3 of sexual assault - as this Court has found all the defendants
4 did know or were alleged to know in the complaint - knowing
5 that she was at risk of sexual assault, whether the defendants
6 took reasonable steps to abate the known risk of harm of sexual
7 assault that she faced. And the second amended complaint
8 contains numerous facts, some of them new facts, showing the
9 defendants simply did not take reasonable steps to abate this
10 known risk of harm by sexual assault.

11 The complaint alleges that at no point prior to the
12 rape did the defendants or any other DOCCS official speak with
13 LeslieAnn Manning to assess her safety as a transgender woman
14 at the Sullivan facility. Issues of her safety as a
15 transgender woman were also not addressed during quarterly
16 reviews; whereas, at her current facility, as the complaint
17 alleges, safety issues for her as a transgender woman are
18 addressed during quarterly reviews. Essentially, the
19 defendants took no steps to assess Ms. Manning's safety and
20 ensure that where she was housed, where she was programmed were
21 going to be safe and were going to be reasonable measures to
22 abate this known risk of sexual assault that she faced.

23 Instead, your Honor, the defendant simply treated her
24 like an average Joe, like any other prisoner, and they put her
25 in a position where there wasn't adequate supervision and

170621manningOA

Argument

1 adequate monitoring of who was entering in and out of the
2 facility to make sure that Ms. Manning was not going to
3 be sexually assaulted, which they knew was a risk of happening
4 because she was a woman, a transgender woman in a man's
5 facility who was at risk of sexual assault and all the
6 defendants knew that.

7 So, given that the complaint alleges that no
8 reasonable steps were taken to abate this known risk of sexual
9 assault, there are allegations that are plausible to show all
10 of these defendants were deliberately indifferent.

11 And as you point out, your Honor, *Farmer v. Brennan*
12 does not require that LeslieAnn Manning notified the warden or
13 the highest-level prison official of her concerns regarding
14 safety. The knowledge of the risk of harm, the knowledge that
15 Ms. Manning was likely to be sexually assaulted doesn't have to
16 come from Ms. Manning herself; it can come from other sources.
17 And in this case, this Court has already found that all the
18 defendants knew that she was at risk of sexual assault. And
19 knowing that Ms. Manning was at risk of sexual assault, placing
20 her in an unsupervised area, which was unmonitored, where a
21 known sexual predator could freely access her was not an
22 appropriate step to abate the risk.

23 The second amended complaint also alleges that
24 importantly there was no video surveillance in that sublevel
25 area. Even though the presence of cameras decreases violence

170621manningOA

Argument

1 in correction facilities the sublevel area wasn't adequately
2 patrolled. Defendant Ladenhauf, who was responsible for
3 patrolling, was to stop by in the morning at 9:00 to sign the
4 logbook. He sometimes didn't even ever come back, such that
5 the only staff person in the sublevel was Defendant Cohen, an
6 instructor. So, there was inadequate supervision. And because
7 of that lack of supervision and the lack of control over who
8 was entering and exiting the sublevel, a number of people were
9 assaulted there. There was also a pattern of sexual assaults
10 in the sublevel.

11 THE COURT: Back up for a second, if we could.

12 The complaint is nonspecific about when these prior
13 assaults took place, and if they did take place five years
14 before -- hang on one second -- to the extent the assaults took
15 place five years before the assault at issue here, and then
16 there's five years where there's no assaults, so let's say
17 there's three assaults and five years beforehand and then no
18 more assaults, then would that really put them on notice?

19 MS. HAZELDEAN: Your Honor, the defendants I think are
20 relying on cases like *Parris v. New York State Department of*
21 *Corrections* or *Coronado v. Goord*, and those are cases about an
22 average Joe inmate who is no more likely to be assaulted than
23 any other prisoner who essentially says, look, I was at risk of
24 assault because you put me in this area where everyone is going
25 to be assaulted. That's not the case here.

170621manningOA

Argument

1 THE COURT: You made that point in your rely brief,
2 and I understand that. But I guess, the first step is the
3 extent to which the defendants would be on notice that subblock
4 E was a particular risk to Ms. Manning given that she herself
5 presented an added risk. So, comparing her to the so-called
6 average Joe that you're referencing here, no matter where she
7 goes, your argument is she's more at risk. And then,
8 particularly, when she's working in a part of the facility that
9 is unmonitored and where there were prior sexual assaults, that
10 that's where the second prong is satisfied here. I understand
11 there are other pieces to your argument, but that's where
12 you're the focusing on.

13 And the point the defendants are making is that if the
14 prior sexual assaults because the complaint is not very
15 specific about when or how many, that it's really hard to say
16 that the second prong has been satisfied; for example, if they
17 were five or ten years before the incident that took place
18 here, then it's unclear that would put any of the named
19 defendants on notice that there was a problem in subblock E.

20 MS. HAZELDEAN: Well, your Honor, as you said, all the
21 defendants were on notice that she was at risk of sexual
22 assault because she's a transgender woman and the question is
23 whether they took reasonable steps to abate that risk. And so
24 given that they didn't assess her safety as a transgendered
25 woman, they didn't take that into account in deciding where to

170621manningOA

Argument

1 place her or where to put her in programming, that's what
2 satisfies the failure to take reasonable steps.

3 And it's our contention that it's not a reasonable
4 step to abate a known risk of sexual assault to put an inmate
5 in an unmonitored, unsupervised area where plaintiffs can come
6 and go and where, as you point out, our client did notify her
7 immediate supervisor that it was unsafe, it was dangerous, that
8 people are coming and going, and there was a history of
9 assaults.

10 And you're right, your Honor, we don't allege
11 specifically when those assaults took place, so that isn't
12 alleged in the complaint, but nevertheless, the complaint does
13 allege that the defendant simply failed to take any reasonable
14 steps. It's not a reasonable step to put a person with a
15 target on their back for sexual assault in an unmonitored area
16 with no supervision with a known sexual predator, Ernest
17 Williams, who had previously sexually assaulted another inmate
18 at another facility and then was transferred to Sullivan
19 following that assault, and who had a reputation for engaging
20 in threatening and harassing behavior. That is not a
21 reasonable step to ensure that somebody who you know is at risk
22 of sexual assault is going to be safe.

23 THE COURT: What if there were cameras? And what if
24 Williams figured out a blindspot in the camera, but the
25 defendant didn't know there was a blindspot and he carried out

170621manningOA

Argument

1 the attack anyway? Would that put the defendants on the hook
2 here?

3 MS. HAZELDEAN: Your Honor, I think the defendants
4 are -- the complaint alleges facts that show it plausible that
5 the defendants are liable here because they knew that she was
6 at risk of sexual assault and they failed to take appropriate
7 steps. And I think the question is, is placing a person known
8 to be at risk of sexual assault in an unmonitored area, where
9 you know there is inadequate supervision, you know it isn't
10 being regularly patrolled, you know that there's no clear
11 sightline into the classroom so no one can see what happens in
12 there, and you know that there's a known rapist in that
13 classroom, is that a reasonable step to abate the known risk of
14 harm?

15 I think, your Honor, were the defendants unaware of,
16 sort of, a deficiency in the cameras, does that tip the scale
17 of, like, well, okay, it was reasonable, but the question is,
18 did they take reasonable steps? And here, the complaint says
19 they didn't take any steps. They never assessed her safety as
20 a transgender woman. They never talked to her about it. They
21 didn't address it when she arrived in Sullivan. They didn't
22 address it in quarterly reviews. When she was subject to
23 anti-transgender sexual harassment by corrections officers and
24 Defendant Urbanski was assigned to investigate it, at no point
25 in that investigation did he look at her risk of assault by

170621manningOA

Argument

1 other inmates who were going to be emboldened by the fact that
2 here is somebody for whom corrections officers have nothing but
3 hostility and contempt who aren't going to protect her. So,
4 they just simply didn't take steps and they treated her like
5 every other inmate, and that's not a reasonable step when you
6 have somebody who is so clearly a target for sexual abuse.

7 In that situation, the defendants had a duty to take
8 reasonable steps to abate the harm, and the complaint does
9 allege some reasonable steps they could have taken. They could
10 have placed her in protective custody. They could have
11 assigned her to a program area where there was better levels of
12 supervision, or they could have placed her in sublevel E, but
13 as you say, they could have made sure there was adequate video
14 monitoring or they could have made sure that it was patrolled
15 regularly, but they didn't do any of those things. They just
16 did absolutely nothing, and that's not a reasonable step to
17 abate the known risk of sexual assault.

18 THE COURT: What did Sergeant Barlow do here that
19 crossed the line, or didn't do that crossed the line?

20 MS. HAZELDEAN: Your Honor, Sergeant Barlow was
21 responsible for supervising officers and prisoners in his area.
22 This is what's alleged in paragraph 9 of the complaint. He was
23 responsible for making sure that the corrections officers in
24 sublevel E followed the rules and regulations, that they
25 attended to their job duties. And he himself conducted rounds

170621manningOA

Argument

1 of the area to make sure that it was safe and secure. He also
2 read logbooks to ensure that they were administered correctly.
3 So, it's reasonable to infer, your Honor, that he knew it was
4 not being patrolled properly; that, in fact, Ladenhauf, who was
5 the officer assigned to patrol, didn't patrol. He came once in
6 the morning for two minutes. He looked around, he signed the
7 logbook and he left. Sometimes he never even came back in the
8 afternoon. Ladenhauf would have known that because he was
9 assigned to monitor those logbooks and to know whether it was
10 being patrolled properly. He would have known that Ladenhauf
11 wasn't patrolling correctly. He would have known that the area
12 had a history of assaults and was unsafe and unsupervised.

13 So, in a failure-to-protect case, a defendant is
14 personally involved if they are aware of the plaintiff's plight
15 and they could have taken steps to abate it, but they failed to
16 take any steps. And here, given Barlow's responsibility as the
17 sergeant to supervise the officers and prisoners, to make sure
18 that Defendant Ladenhauf is doing his job, given that he knew
19 that the area was unmonitored, unsupervised, unpatrolled, there
20 was a history of assaults in that area, knowing that LeslieAnn
21 Manning as a person at risk of sexual assault was working
22 there, and then failing to take any steps to abate that risk of
23 harm, your Honor, he is personally involved in a constitutional
24 violation.

25 THE COURT: And what about Urbanski? Urbanski is

170621manningOA

Argument

1 really the main charge. Urbanski gets here to investigate the
2 correction officer on plaintiff's harassment, not
3 inmate-on-inmate issues.

4 MS. HAZELDEAN: Right, your Honor, that's correct.

5 So Captain Urbanski was a captain in the facility.
6 He, again, was responsible for overseeing corrections officers
7 and the sergeants who were in charge of them. He was also, as
8 you say, charged with investigating and responding to prisoner
9 complaints, including complaints regarding safety. So, given
10 his responsibilities there, it's reasonable to infer that he
11 knew about the history of assaults in sublevel E. He knew
12 about the pattern of sexual assaults in the sublevel areas. He
13 knew that this was a dangerous place. And he knew that
14 Ms. Manning was transgender and had been singled out for
15 harassment, as you say, by corrections officers who subjected
16 her to anti-transgender harassment, but, again, he didn't step
17 in.

18 And in terms of the harassment by corrections
19 officers, you're quite right, your Honor, that the allegations
20 here are that corrections officers in October and November of
21 2012 were sexually harassing Ms. Manning on account of her
22 transgender status and the reason why that matters, your Honor,
23 as it's now made clear, I think, in the second amended
24 complaint, which alleges that according to corrections experts,
25 if an officer permits anti-transgender harassment or is seen to

170621manningOA

Argument

1 exhibit hostility and contempt towards a transgender person,
2 this is going to embolden inmates. It essentially communicates
3 to the inmates this is a disfavored prisoner, this is someone
4 who corrections officers don't want to protect; it essentially
5 declares open season on that transgender inmate.

6 THE COURT: If the inmates know of the harassment,
7 right, or they know the harassment is tolerated?

8 MS. HAZELDEAN: The allegation in the complaint, your
9 Honor, is that when corrections officers tolerate and permit
10 anti-transgender harassment to continue, this emboldens other
11 inmates to attack the transgender person.

12 THE COURT: But only if they know about it, right? In
13 other words, it only triggers the other inmates if they are
14 aware that it's tolerated. If they don't know, if there's some
15 incident that takes place of a corrections officer harassing an
16 inmate and the other inmates don't know, then that wouldn't
17 embolden them, right?

18 MS. HAZELDEAN: Right, your Honor. I see what you're
19 saying. I think that the allegations in the complaint here are
20 such that this would have been public knowledge. This is not a
21 situation where, in secret, an officer was targeting
22 Ms. Manning. This is where she was pulled out of a medication
23 line and physically assaulted. I think, in view of other
24 prisoners, I'm sure that knowledge of this would have spread
25 around. But your Honor, the point is, again, that Urbanski

170621manningOA

Argument

1 knew that if he were to tolerate anti-transgender harassment of
2 Ms. Manning as a transgender woman, that was going to embolden
3 the other inmates; and any investigation, according to the
4 complaint, any investigation that took place following the
5 complaints about this harassment did not address Ms. Manning's
6 risk of assault by inmates, it did not assess her safety as a
7 transgender woman. So Urbanski, knowing that she was at risk
8 for all these reasons, because she was working in sublevel E
9 where there was inadequate supervision, because of the history
10 of assaults in sublevel E, because of the pattern of sexual
11 assaults, knowing all of this, he failed to take any steps and
12 as such, he is personally involved. That personal
13 involvement in a failure-to-protect case, as you know, your
14 Honor, simply means that the defendant was on notice of the
15 plaintiff's plight and failed to take any steps. And we
16 certainly have allegations in the complaint that Urbanski was
17 in that situation.

18 THE COURT: Any other points you want to address?

19 MS. HAZELDEAN: No, your Honor. That's it.

20 THE COURT: Okay.

21 MS. HARTOFILIS: May I, your Honor.

22 THE COURT: Of course.

23 MS. HARTOFILIS: I always say a few, but it could be
24 more than a few points.

25 THE COURT: That's fine. There's no red or yellow

170621manningOA

Argument

1 lights here.

2 MS. HARTOFILIS: Great. Thank you.

3 THE COURT: Take your time.

4 MS. HARTOFILIS: I just wanted to clarify something.

5 This statement that C.O. -- correction staff assaulted
6 Ms. Manning in front of inmates, that wasn't alleged in the
7 complaint. They're alleging a pat frisk where they touched her
8 breasts, and they're just -- so that's not --

9 THE COURT: The complaint is silent as to whether or
10 not other people saw it or not.

11 MS. HARTOFILIS: Correct, correct.

12 And as far as Captain Urbanski, if her own attorneys
13 didn't raise the potential possibility in their letter of the
14 sexualized pat frisks could possibly lead to sexual assaults by
15 inmates, how is Captain Urbanski supposed to draw that
16 conclusion? These unidentified correctional experts, who are
17 these people?

18 THE COURT: Doesn't it stand to reason -- we don't
19 need experts to tell us that people model behavior. If a
20 corrections officer were to strike an inmate having nothing to
21 do with how the inmate identifies, then one could imagine that
22 that would lead to an increase in violence because the inmates
23 would say, okay, it's open season on that person.

24 But what if the corrections officer strikes the person
25 because you're a snitch, boom, strikes the person, and then the

170621manningOA

Argument

1 other inmates say, okay, open season on the snitch. I don't
2 know that we need an expert to tell us that link.

3 MS. HARTOFILIS: That is correct, your Honor, but you
4 have a captain who gets a letter forwarded to him from a
5 superintendent that says the officers are conducting the pat
6 frisks in a way that makes her uncomfortable. I don't remember
7 exactly what the allegations were. And the truth is that all
8 inmates -- inmates don't like to be pat-frisked. And I can
9 imagine a transgender inmate who is going through hormone
10 replacement therapy who might have breasts is not going to like
11 to be pat-frisked, but security has to conduct pat frisks a
12 certain way. They have to pat them down, so that's one thing.

13 So, the captain gets this letter that says she's not
14 happy with the way the pat frisks are conducted. How is
15 Captain Urbanski then supposed to say, you know what -- what is
16 he supposed to do personally? He's required to investigate the
17 complaint that's given to him. He did. He investigated it.
18 The superintendent wrote to plaintiff's attorneys. So, we
19 believe that that Captain Urbanski cannot be liable based on
20 that letter.

21 THE COURT: The complaint alleges that he didn't
22 adequately deal with it. I think paragraph 71 says that he
23 dealt with it inadequately. And there may not be a lot of
24 specifics, but the allegation is contrary to the notion that
25 Urbanski handled that appropriately.

170621manningOA

Argument

1 MS. HARTOFILIS: Okay, fine. But the fact that he
2 that he investigated it, I don't know what else they were
3 looking for him to do in this investigation. But the pat
4 frisks are not an issue here, and that's --

5 THE COURT: I understand. The issue is harassment.

6 MS. HARTOFILIS: Yes, the issue is that could those
7 pat frisks lead -- but that's one issue. The other thing that
8 they raise is, and we addressed it in our brief, is the
9 security measures that should have been taken. But as we said
10 in our moving papers and our reply, if they are not aware of
11 the risk, what risks are they going to abate with these
12 cameras?

13 And there are no allegations that these five
14 defendants were involved in or would be the ones who would meet
15 with her when she came in or who would be involved in her
16 programming, so that's also very relevant on this issue. Our
17 position is they didn't allege enough of a risk and that that
18 risk was known, so then there was no need for these additional
19 security measures.

20 The other point, Inmate Williams. No allegation that
21 they knew that he was in that sublevel area, whether it was for
22 classes or programs. No allegations that any of the defendants
23 were aware. They allege that the five defendants were aware
24 that Ms. Manning worked there, but no allegations that they
25 knew that Williams was there. No allegations that they knew

170621manningOA

Argument

1 Williams had committed sexual assaults in the past. No
2 allegations that she told them that he had exposed himself to
3 her, so that's very relevant.

4 And last, but not least -- no, there's two more
5 points. They said she shouldn't be treated like an average
6 Joe, that she shouldn't be treated like all the other inmates.
7 Then there should be allegations like we said when we first
8 started this argument that there were sexual assaults of
9 transgender inmates because it should be specific. There
10 should be knowledge by these individuals of risk as alleged in
11 this complaint, and they don't allege that.

12 THE COURT: Well, they do allege, though, that letters
13 were written on Ms. Manning's behalf to identify the safety
14 issues unique to her because of her transgender status, right?

15 MS. HARTOFILIS: Right.

16 THE COURT: And then Griffin is on notice. And then,
17 of course, there's this national legislation, there's sort of a
18 national initiative or certainly information that identifies
19 that transgender inmates as a class are more at risk, right?
20 And we had this conversation the last argument. What does that
21 mean for prison officials? Does it mean, to make sure they're
22 never sued, they should just go ahead and put every transgender
23 inmate in solitary and then run the risk that they get sued for
24 doing that, right, that solitary itself becomes an Eighth
25 Amendment violation.

170621manningOA

Argument

1 But what the plaintiff is saying here is that there
2 needs to, at least, be some effort to try to figure out whether
3 she was at risk in terms of how she spent her day and that
4 there was never any, sort of, effort to reach out to
5 Ms. Manning and, sort of, say, Okay, what is your day like,
6 what are you doing, and then asking themselves, What should we
7 do to make sure that, because she's at a higher risk than the
8 average inmate, that we make sure that she's in an environment
9 where those risks are accommodated?

10 And they're saying that nothing was done here. Not
11 that what was done wasn't enough - they're saying nothing was
12 done and that she's in the one cell block area where prior
13 incidents have happened, it's unmonitored, it's poorly
14 supervised, Cohen knows about it, and literally nothing is
15 done. That's their argument.

16 MS. HARTOFILIS: Right. And the Court did find that
17 they satisfied the first prong for deliberate indifference,
18 that defendants were aware of this heightened risk that she
19 faced as a transgender woman, but that doesn't translate that
20 rape was inevitable or likely. They had to have known that
21 that particular -- that was the Court's order in this case:
22 Was there a risk at that sublevel and were they aware of it?
23 And we don't believe that they have pled that.

24 THE COURT: Anything else?

25 MS. HARTOFILIS: That's it.

170621manningOA

Argument

1 THE COURT: Thank you.

2 MS. HAZELDEAN: May I briefly, your Honor. Thank you.

3 Your Honor, again, as we discussed, this Court has
4 found that the defendants were on notice that Ms. Manning was
5 at risk of sexual assault because she's a transgender woman.
6 And in this new version of the complaint, the second amended
7 complaint, there are several new allegations with respect to
8 the defendants' failure to take reasonable steps to abate that
9 risk.

10 They failed to assess her need for safety as a
11 transgender woman when she arrived at Sullivan; no DOCCS
12 official or any defendant ever spoke with her about her safety
13 as a transgender woman; they didn't address it in quarterly
14 reviews. They simply didn't take steps to make sure that this
15 known risk of sexual assault was going to be abated.

16 With respect to her placement in sublevel E, your
17 Honor, the allegation is plausible that the defendants knew
18 that there had been a history of assaults in that area, there
19 was a pattern of sexual assaults in the sublevel area. And all
20 we're required to show at this point, your Honor, is that it's
21 plausible that the defendants knew of that and so they knew
22 that placing Ms. Manning in that area, which was unmonitored,
23 unsupervised, where there's no control over who is coming and
24 going was not an appropriate measure to abate the risk of harm
25 that she faced.

170621manningOA

Argument

1 The second amended complaint also alleges that there
2 were no cameras in sublevel E, even though video monitoring
3 would have decreased the risk of violence in that area. So,
4 for all of these various reasons, your Honor, placing
5 Ms. Manning in sublevel E was not an appropriate measure to
6 abate the known risk of harm that she faced. So, the
7 defendants are deliberately indifferent because they knew she
8 was at risk of sexual assault, but they failed to take any
9 reasonable steps to abate that risk of harm, your Honor. Thank
10 you.

11 THE COURT: Thank you.

12 Anything else?

13 MS. HARTOFILIS: Nothing further, your Honor. We rely
14 on our papers.

15 THE COURT: Okay.

16 So, because this is round two, and because, frankly,
17 the issue has been very well briefed, and because dotting i's
18 and crossing t's will further delay the case, what I'm going to
19 do is give you my ruling now, and then we can go from there.

20 So, just in terms of some of the salient facts, we all
21 know the procedural history about what the ruling was back in
22 March of '16, and I did give plaintiff leave to file a second
23 amended complaint.

24 In terms of some of the salient allegations: So,
25 plaintiff is a transgender female who has been incarcerated at

170621manningOA

Argument

1 various mens maximum security facilities for quite some time, I
2 think around two decades, and at the time was a prisoner at
3 Sullivan.

4 In addition to being a transgender female, plaintiff
5 also suffers from some pretty serious health problems,
6 including HIV, chronic obstructive pulmonary disease, heart
7 disease, hearing loss, and incontinence. Plaintiff has
8 received hormone therapy for several years and has legally
9 changed her name to reflect her gender identity.

10 Now, plaintiff arrived at Sullivan on August 21 of
11 2012 and was housed in the general population. She was later
12 assigned to work as an educational clerk assisting Defendant
13 Cohen, which required her to work in sublevel E, an area at
14 Sullivan that is described as, quote, "off a main corridor with
15 five rooms aligned down a hallway," and that's from paragraphs
16 27 and 28 of the second amended complaint.

17 Among her duties included assisting the deaf and
18 visually impaired with various tasks, as well as with assisting
19 in the distribution of supplies, such as paper and writing
20 instruments.

21 Now plaintiff has added some allegations regarding
22 sublevel E. For example, plaintiff alleges that sublevel E was
23 known among the Sullivan inmates as a, quote, "big hangout"
24 because the prisoners could come and go as they pleased,
25 whether they were supposed to be there for programming or not.

170621manningOA

Argument

1 Now, on February 5 of 2013, in the early afternoon,
2 approximately 1:15, while plaintiff was working her shift as an
3 inmate program associate in sublevel E, Cohen asked plaintiff
4 to deliver a paper to a prisoner sitting alone in a classroom.
5 This prisoner was Ernest Williams. So, plaintiff complied with
6 the request and delivered the paper to Williams, but before she
7 could leave, Williams raped plaintiff and threatened to kill
8 her if she reported the incident.

9 Notwithstanding this threat, plaintiff reported the
10 incident, but she did wait two days and was taken to a medical
11 center where medical professionals examined plaintiff and found
12 that she exhibited signs of sexual assault.

13 After returning to Sullivan, plaintiff was transferred
14 to protective custody where she remained until March or April
15 of 2013, was released back into the general population, and
16 then subsequently transferred to the Clinton Correctional
17 Facility where she was housed in protective custody. And she's
18 currently, at least at the time of the drafting of the second
19 amended complaint, incarcerated at Wende Correctional Facility.

20 Now, as a result of the sexual assault, plaintiff
21 alleges that she frequently, quote, "wakes up in the middle of
22 the night racked by nightmares and in sweats," and she does
23 this anywhere from four to seven nights per week. She is
24 prescribed a bunch of medicine, including Zoloft for her
25 symptoms.

170621manningOA

Argument

1 Now, the initial complaint was filed back in January
2 of 2015 against Griffin, Cohen, somebody identified as Mark
3 Royce, and then a couple of John Does.

4 Plaintiff filed an amended complaint on May 20, 2015
5 against Griffin, Giglio, Urbanski, Barlow, Ladenhauf, and
6 Cohen. The second amended complaint does not include Giglio as
7 a defendant, FYI.

8 So, there was a motion to dismiss and the Court issued
9 an opinion on March 31, 2016, which granted the motion but
10 dismissed the first amended complaint without prejudice, so
11 here we are at round two.

12 In terms of the legal standards: The Eighth Amendment
13 requires prison official to, quote, "take reasonable measures
14 to guarantee the safety of inmates in their custody." That's
15 from the Second Circuit decision in *Hayes v. New York City*
16 *Department of Corrections*, 84 F.3d 614, 620. And, of course,
17 all of this starts with the Supreme Court decision in *Farmer*,
18 which, obviously, will be the decision that governs here.

19 Now, prison officials have a duty to protect prisoners
20 from violence at the hands of other inmates because being
21 violently assaulted in prison is not part of the penalty that
22 criminal offenders are to pay for their offenses against
23 society. That's what was said in *Lee v. Artuz*, 2000 WL 231083,
24 at *4, quoting from *Farmer*. And as the *Farmer* Court noted,
25 quote, "Having incarcerated persons that demonstrate a

170621manningOA

Argument

1 proclivity for anti-social, criminal and often violent conduct,
2 having stripped them of virtually every means of
3 self-protection and foreclose their access to outside aid, the
4 government and its officials are not free to let the state of
5 nature take its course." That's from page 833.

6 And what one Court in the District of Connecticut
7 noted is that, quote, "A prisoner is not reasonably safe if, as
8 a result of personal characteristics or past threats, that
9 prisoner is likely to be a victim of physical or sexual
10 assault." The case is *Leconte v. Lightner*, 2015 WL 4104842, at
11 *2.

12 Now, to establish constitutional liability,
13 plaintiff/prisoner has to allege actions or omissions
14 sufficient to demonstrate deliberate indifference; in other
15 words, mere negligence will not suffice. That's from the *Hayes*
16 decision at page 620.

17 To satisfy the deliberate indifference standard, the
18 plaintiff has to show, first, that she's incarcerated under
19 conditions posing a substantial risk of serious harm; and
20 second, the defendant/prison officials possessed sufficient,
21 culpable intent. That's from *Hayes* at 620, citing *Farmer* at
22 834.

23 The first prong, as we all know, is objective and
24 requires that prison officials provide inmates with basic human
25 needs, one of which is reasonable safety said the Supreme Court

170621manningOA

Argument

1 in *Helling v. McKinney*, 509 U.S. 25, at page 30 and 33.

2 The second prong involves the culpable intent and,
3 there, there's an additional two-tier inquiry. Quote, "A
4 prison official has sufficient culpable intent if the prison
5 official has knowledge that an inmate faces a substantial risk
6 of serious harm and disregards that risk by failing to take
7 reasonable measures to abate the harm." So, the official must
8 be both aware of facts from which the inference could be drawn
9 that a substantial risk of serious harm exists and also, the
10 official must draw that inference, and that's all from *Farmer*
11 at page 837.

12 Now, with respect to, sort of, honing in on the
13 deficiencies that the Court found existed in the plaintiff's
14 amended complaint, there's no serious dispute here that
15 plaintiff has satisfied the objective prong of the deliberate
16 indifference test. So, really, the heart of the defendants'
17 motion addresses the failure of the plaintiff to allege that
18 the defendants consciously disregarded the known risk to
19 plaintiff, in particular by allowing the plaintiff to work in
20 sublevel E.

21 Regarding the prior opinion, what the conclusion was,
22 was that while plaintiff had adequately alleged knowledge of a
23 general heightened risk of sexual assault of transgender
24 inmates, plaintiff's claim was predicated on the allegation
25 that her vulnerability as a transgender inmate made her

170621manningOA

Argument

1 placement in the allegedly unsupervised sublevel E a
2 substantial risk to her safety.

3 And what I noted in the prior opinion was that what
4 was missing was an allegation that was material to any finding
5 that would support that the defendants were -- in other words,
6 that the second prong was satisfied. So, for example, there
7 were insufficient allegations, in the Court's view, that the
8 defendants knew that plaintiff's work assignment required her
9 to even work at sublevel E. Certainly, that was true of Cohen,
10 but not as to the other defendants. And in particular, what
11 was noted in the opinion was, quote, the amended complaint did
12 make an allusion to the fact that defendants knew that
13 plaintiff worked in sublevel E and that they allowed isolated
14 sublevels of the prison to remain unmonitored, particularly at
15 times when they knew plaintiff worked in that area. But the
16 allegations, in my view, were vague and conclusory and only
17 appeared in the preliminary statement and grouped together all
18 the defendants and lacked any support in the remainder of the
19 amended complaint.

20 Also, in the Court's view, the amended complaint
21 didn't sufficiently plead that the conditions in sublevel E
22 posed a substantial risk to the inmates in the sublevel or that
23 the defendants were aware that there were particular risks to
24 inmates in sublevel E, let alone risks to plaintiff herself.

25 Now we have the second amended complaint. And with

170621manningOA

Argument

1 regard to the defendants' knowledge that plaintiff's work
2 assignment required her to be in sublevel E, the Court's view
3 is the plaintiff has cured this previously-identified
4 deficiency.

5 Certainly, Cohen, which all along I thought plaintiff
6 had established Cohen was aware of plaintiff's work in sublevel
7 E. After all, plaintiff worked for Cohen in that area. But
8 also plaintiff has alleged that Ladenhauf was, quote,
9 "responsible for patrolling the area," closed quote; he would
10 sign a logbook indicating he had walked through the area, and
11 that, in fact, plaintiff had to ask Ladenhauf for a pass
12 whenever something required her to leave her job, which she had
13 done on numerous occasions. So there's direct evidence that
14 Ladenhauf knew that plaintiff worked in sublevel E.

15 Regarding Griffin, Urbanski, and Barlow, the
16 allegation is that they stopped by sublevel E on several
17 occasions while plaintiff was working there and that all the
18 defendants knew who she was. That's from paragraph 36. Also
19 in paragraph 36, plaintiff alleges that each of these
20 defendants - Griffin, Urbanski and Barlow - was aware that
21 plaintiff was engaged in programming in the sublevel because
22 they had personally observed her at her work assignment, and,
23 in fact, Griffin had said hello to plaintiff when he saw her in
24 the sublevel. So, in the Court's view, that issue has been
25 sufficiently addressed.

170621manningOA

Argument

1 Next is the issue of the awareness of conditions in
2 sublevel E, and there are additional allegations that plaintiff
3 makes, and defendants take the view that they're not
4 sufficient.

5 Now, some background here: What the courts have held
6 is that, quote, "Although an inmate cannot rely on allegations
7 that prison officials knew of issues of prison safety in the
8 most general sense, it is sufficient to allege the defendants
9 knew the specific hazardous condition." That's from *Stephens*
10 *v. Venettozzi*, 2016 WL 4272376, at *2.

11 Now, a plaintiff alleges, and I had this quote
12 earlier, but in paragraph 29, she alleges that sublevel E was
13 known among Sullivan inmates as a big hangout because the
14 prisoners could come and go as they pleased, whether they were
15 supposed to be there for programming or not.

16 In addition to this, also in paragraph 29, plaintiff
17 alleges that, quote, "Because of the lack of control over who
18 entered the sublevel, as well as the lack of supervision in the
19 area, several people were assaulted there." And also plaintiff
20 alleges that upon information and belief, there was a pattern
21 of sexual assault in the sublevel areas at Sullivan.

22 Now, with regard to the allegation that several people
23 were assaulted, actually with regard to both, there are no
24 details provided. One could draw the inference that these were
25 assaults that took place while plaintiff was there or one could

170621manningOA

Argument

1 draw the inference that plaintiff had heard that there were
2 assaults there that predated her being there. The complaint is
3 not specific.

4 One thing that defendants do take issue with is the
5 phrase "upon information and belief," but that's not something
6 that is fatal, even in a post-*Twombly* world. This was noted in
7 *Lefkowitz v. John Wiley & Sons, Inc.*, 2014 WL 2619815, at *9.

8 Now, in order to conclude that any particular
9 defendant had culpable knowledge of the risk presented in
10 sublevel E, the prior incidents would have to be longstanding,
11 pervasive and well documented, or expressly noted by prison
12 officials in the past, and the circumstances would have to
13 suggest that the defendant officials being sued had been
14 exposed to information concerning the risk and, thus, must have
15 known about it. That's from *Farmer* at 842 and 843.

16 And the defendants argue that even these additional
17 allegations don't establish that they were aware of any prior
18 assaults, whether they were sexual assaults or otherwise. But
19 one thing that the second amended complaint does allege is
20 that, as a result of some of these prior assaults in the
21 sublevel E area, that corrections officers changed their
22 supervision patterns, that they patrolled more frequently, and
23 they would lock the classrooms, but that all of these were
24 measures that were adopted temporarily, which makes two points
25 for plaintiff, obviously. One is that they were aware, thus

170621manningOA

Argument

1 the change in the security protocols; but second,
2 notwithstanding the fact they were aware, they didn't adopt
3 any, sort of, longstanding change to address the security
4 issues, so they might temporarily alter the protocols.

5 So, whether or not it can be said that the prior
6 attacks were longstanding and pervasive, I think plaintiff has
7 plausibly alleged that the prior assaults were expressly noted,
8 that that's a plausible inference from how it is alleged that
9 the defendants or that the prison officials responded to these
10 attacks. And it bears noting again that while the details are
11 not provided, plaintiff does allege a pattern of sexual
12 assaults, and that's not lost in terms of its significance
13 here.

14 Now, in terms of breaking it down defendant by
15 defendant, regarding Cohen, as I said, plaintiff alleges that
16 she told Cohen, quote, "that prisoners could enter and exit
17 sublevel E because the entrance was usually unlocked," and she
18 also shared with Cohen her view that there was just not enough
19 control over sublevel E. She also alleges that on several
20 occasions, she expressed concern that the area was dangerous
21 because of the unfettered access and the general lack of
22 supervision.

23 She also alleges, in terms of Cohen's ability to
24 address some of this, that he had the ability and the authority
25 to lock or unlock doors in the sublevel. He could issue

170621manningOA

Argument

1 disciplinary infractions to prisoners. And, of course, he had
2 the authority and, in plaintiff's view, the responsibility to
3 notify security staff of any breach of security in the
4 facility.

5 Now, what defendants say is that the plaintiff didn't
6 really advise Cohen of the danger of any sexual assault, let
7 alone assaults on transgender inmates. And there's a couple of
8 cases that I think are helpful in terms of addressing that
9 point. *Gonzalez v. Martinez*, 403 F.3d 1179, 1187. It's a
10 Tenth Circuit decision where the Court held there that
11 evidence of prior nonsexual physical assault, lapses in jail
12 security and sexual harassment and intimidation by guards was
13 sufficient to support a reasonable inference that the defendant
14 in that case was aware of the risk of sexual assaults to
15 sustain an Eighth Amendment indifference claim.

16 So, to the extent that plaintiff shared her concerns
17 and the specifics of the concerns so that there was unfettered
18 access and a lack of supervision, and that the place had become
19 dangerous, combined with the other allegations about prior
20 assaults, even if they weren't sexual assaults necessarily or
21 even if they weren't sexual assaults of transgender inmates, in
22 the Court's view, plaintiff has sufficiently alleged that Cohen
23 knew of and disregarded the excessive risk because there's also
24 the allegation that Cohen basically threw his hands up and
25 said, What do you want me to do? So, I think that there is

170621manningOA

Argument

1 enough in the complaint to satisfy the second prong as it
2 relates to Cohen.

3 Regarding Ladenhauf, what plaintiff alleges is that at
4 the time of the assault, Ladenhauf was assigned to patrol the D
5 and E housing unit and that he was the primary security staff
6 person responsible for patrolling and providing general
7 security in sublevel E. And as I mentioned, there's the
8 allegation that he would sign the logbook indicating that he
9 had walked through the area. He typically did this at 9:00 in
10 the morning and he would remain in the area for a couple of
11 minutes, but he didn't always return to patrol the sublevel E
12 in the afternoon. And he didn't always sign the logbook in the
13 afternoon or during the afternoon hours.

14 And you know, plaintiff makes the allegation, which is
15 really an inference from some of the other allegations, that
16 because he was the primary security person responsible for
17 sublevel E security, that it's a fair inference that he would
18 have been aware of any assaults that took place in sublevel E,
19 even if he wasn't working at the time of the assaults. And I
20 think that's a fair inference that can be drawn under the
21 circumstances, especially when the allegation is that there was
22 a pattern of assaults.

23 Also, there was, and I mentioned this earlier, there's
24 sufficient evidence that Ladenhauf was certainly aware of
25 plaintiff's transgender status, as well, by the way, of her

170621manningOA

Argument

1 other medical issues and knew that plaintiff was assigned to
2 work there. And so what plaintiff says is, add it all up, you
3 have an individual who is aware of plaintiff's heightened risk,
4 is aware of the lack of security because he's the one
5 responsible for the lack of security and presumably is aware of
6 the things like the lack of any surveillance cameras and
7 whatnot, that he was aware of prior assaults and that he
8 nonetheless did not take any reasonable measures or, in
9 plaintiff's view, any measures to abate the harm, the specific
10 harm that was faced by plaintiff. In the Court's view, those
11 allegations are sufficient.

12 With regard to Griffin, the allegation is that Griffin
13 knew about the lack of adequate supervision in sublevel E.
14 Again, some of this is from the allegations of the pattern of
15 prior assaults that was met with temporary changes in the
16 security protocols, but they weren't permanent to which
17 evidences both knowledge, but a lack of commitment to adopt any
18 security protocols, certainly any protocols that were meant to
19 address plaintiff's unique security risks. And there are cases
20 that say that such knowledge is sufficient. So, for example,
21 *Taylor v. Zerillo*, 2008 WL 4862690, at *4, it's an Eastern
22 District decision, where there the Court found that the fact
23 that the defendant knew that a housing block was short-staffed,
24 but nonetheless failed to adjust the staffing levels suggests
25 that that defendant was directly involved because he was

170621manningOA

Argument

1 responsible for the policy that fostered the violation at
2 issue. And it's also telling that plaintiff makes this
3 allegation, and it's a smart thing to include, so, for example,
4 what plaintiff alleges is that the library actually was located
5 in the sublevel area prior to plaintiff's arrival at Sullivan,
6 but then it had to be moved because inmates had engaged in
7 prohibited behavior there, including sexual activity. So in
8 order to maintain the security at the library, it was moved at
9 a location outside the sublevel. So there you have an example
10 of where there was a problem and measures were taken to address
11 the problem. And here, you have, from plaintiff's perspective,
12 evidence that there was a problem in sublevel E, that there
13 were only temporary measures taken, unlike the library, and
14 that shows both knowledge and indifference to plaintiff's
15 security risks.

16 Now, what the defendants argue is that there's no
17 allegation that Griffin was aware of the alleged prior sexual
18 activity and the sexual assaults in the sublevel area. Again,
19 the allegation is to the contrary with regard to the temporary
20 measures being adopted and whether or not there were any prior
21 assaults on transgender inmates is really not the bar that
22 plaintiff has to meet in order to establish the second prong
23 for reasons I've already explained.

24 The bottom line is that plaintiff alleges that Griffin
25 was aware that plaintiff worked in sublevel E; that because of

170621manningOA

Argument

1 his title and his job responsibility, he was the one
2 responsible for enforcing the security policies and managing
3 those policies and procedures and changing them, if necessary,
4 to address security needs; that he was, in his position, aware
5 that there were, for example, no cameras in sublevel E as
6 opposed to in other areas; he would be aware of the sightline
7 issues that plaintiff had identified; and he would have been
8 aware of any prior assaults that took place in sublevel E as he
9 was in charge of managing the day-to-day security at the
10 facility.

11 So, add it up altogether, the Court's finding or
12 conclusion is that plaintiff has sufficiently alleged that
13 Griffin could be liable for the Eighth Amendment violations
14 that plaintiff includes in the complaint.

15 Barlow: The allegation is that he was the sergeant
16 assigned to the program area that included sublevel E, that he
17 was responsible for supervising the officers and prisoners in
18 the area, that as a result of those responsibilities, he would
19 have been aware of the camera issue, he would have been aware
20 of the rounds that were being conducted or not being conducted
21 in the area, he'd be aware of the physical layout, he's the one
22 that would be responsible for reading the logbooks. All of
23 this is included in paragraph 9 of the second amended
24 complaint. So, therefore, he would be aware, for example, of
25 Ladenhauf's failure to conduct the afternoon rounds as this

170621manningOA

Argument

1 would have been indicated in the logbook. And as I noted
2 earlier, plaintiff alleges that Barlow was aware that plaintiff
3 was assigned to work in sublevel E.

4 So, that combined with Barlow's responsibilities and
5 therefore knowledge of the lapses in security, and because of
6 his supervisory role, knowledge of the prior incidents in
7 sublevel E at this stage plausibly state a claim against
8 Barlow.

9 Urbanski is a closer call because Urbanski -- the main
10 thing about Urbanski that's alleged as it relates to plaintiff
11 was that Urbanski was the individual who was assigned to
12 investigate the harassment that plaintiff suffered as a result
13 of conduct by corrections officers, not other inmates. And the
14 allegation is that he inadequately addressed these incidents.
15 And the allegation is that -- and they're citing experts, but
16 as we talked about earlier, I'm not sure the plaintiff needed
17 to do that, but to the extent that somebody in plaintiff's
18 position who presents a unique security risk, and if inmates
19 understand that corrections officers get away with harassing
20 such inmates, that other inmates will model that behavior. And
21 there are some issues with that.

22 I mean, it's not entirely clear from the complaint
23 that the inmates were aware of the harassment that plaintiff
24 says she suffered as a result of corrections officer
25 misconduct, that they were aware of the inadequate

170621manningOA

Argument

1 investigation, so they would have been aware that it was open
2 season. I think plaintiff has a hard time making a link
3 between the alleged failure to investigate a corrections
4 officer incident and what Williams did. While I understand the
5 conceptual link, I think there may be some factual gaps.

6 But plaintiff also alleges that Urbanski was
7 responsible for overseeing the sergeants and corrections
8 officers; that he was responsible for dealing with prisoner
9 complaints, including complaints regarding safety concerns; and
10 as a result, that puts him in position to be aware of the prior
11 activity in sublevel E, to be aware of the protocols that were
12 adopted in sublevel E. And as I had already mentioned, he was
13 aware of the fact that plaintiff worked in sublevel E and was
14 aware of plaintiff's transgender status. So, I think plaintiff
15 has plausibly alleged a claim as to Urbanski as well.

16 I haven't really addressed plaintiff's allegations
17 regarding what defendants knew about Williams. I think it
18 suffices to say at this point that because plaintiff has
19 alleged enough about the defendants' knowledge of plaintiff's
20 status, the fact that she was at a unique risk, and everything
21 I've already mentioned regarding the second prong, from
22 plaintiff's perspective, this may be additive, and it may be,
23 but I don't think it's essential to plaintiff's case.

24 So taking all the allegations as the Court must at
25 this stage, as being true, the Court finds and concludes that

170621manningOA

Argument

1 plaintiff has plausibly stated a claim as to each of the
2 defendants, so the motion is denied.

3 And I don't have to therefore address the
4 not-so-difficult issue about whether or not the plaintiff
5 should be allowed to amend again, because I would have agreed
6 with the defendants this time.

7 Discovery. If you want, I can let you all talk and
8 you want to just send a proposed discovery schedule in the next
9 week.

10 Is that a fair thing to do?

11 MR. HARTOFILIS: Yes, your Honor, because we weren't
12 prepared --

13 THE COURT: I understand.

14 MS. HARTOFILIS: -- to cover this today.

15 THE COURT: That's why I don't want to, like, make it
16 up now as we go along.

17 MS. HARTOFILIS: Can we ask how much time your Honor
18 is inclined to give us for discovery in this case?

19 THE COURT: So, standard fare is 120 days. Everybody
20 always has excuses ranging from "I'm really busy" to "this is a
21 complicated case." My favorite is, "Well, it's summertime,"
22 and then in the fall I get "It's holiday time." And I guess we
23 all work only, like, five months a year. The lawyers in this
24 room are not people who are susceptible to that kind of
25 excuse-making, but I have heard those excuses.

170621manningOA

Argument

1 MS. HAZELDEAN: Your Honor, I'm actually about to
2 leave for vacation. If we could have a little more time to put
3 together --

4 THE COURT: Sure. How much time do you want?

5 MS. HAZELDEAN: -- that would be preferable for me.

6 Could we make it three weeks instead of one? I'm
7 leaving, and I'm going to be away for two weeks. I come back
8 after the July 4th weekend.

9 THE COURT: Three weeks, but I therefore think we can
10 get the fact discovery done sometime in the -- I guess that
11 would put us in the, like, late fall. And I don't know, are
12 there going to be experts? It sounds like there might be.

13 MS. HAZELDEAN: Yes, I believe so.

14 THE COURT: So, maybe the experts get done by either
15 the very end of the year or early part of next year, but
16 through nobody's fault, the case has some age to it, so let's
17 try to make up the time with the discovery phase.

18 So, three weeks from today, then, would be the
19 proposed discovery schedule?

20 MS. HAZELDEAN: Yes, your Honor.

21 THE COURT: Okay. And then I'll refer the case to the
22 magistrate judge to supervise discovery should there be any
23 spats.

24 Anything else?

25 MS. HAZELDEAN: Not at this time.

170621manningOA

Argument

1 THE COURT: As always, I thank you all for your
2 advocacy. As I said, this is obviously a very tough case, but
3 not made tougher by the lawyering, just the opposite.

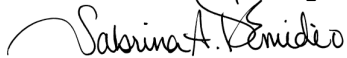
4 So, I thank you all, and I bid you a pleasant vacation
5 and the rest of the day.

6 MS. HAZELDEAN: Thank you, your Honor. I appreciate
7 that.

8 MR. HARTOFILIS: Thank you, your Honor.

9 - - -

10 Certified to be a true and correct
11 transcript of the stenographic record
12 to the best of my ability.

13 
14 U.S. District Court
15 Official Court Reporter

16

17

18

19

20

21

22

23

24

25